

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DIVISION
ABINGDON DIVISION**

KYMBERLY HOBBS, ADMINISTRATOR
OF THE ESTATE OF CHARLES JAMES GIVENS,
DECEASED,

Plaintiff,

Civil Action No.: 1:23-cv-00003

v.

ANTHONY RAYMOND KELLY, et al.,

Defendants.

PLAINTIFF’S OBJECTIONS TO DEFENDANTS’ DESIGNATED TRIAL EXHIBITS

COMES NOW Plaintiff Kymberly Hobbs, Administrator of the Estate of Charles James Givens, Deceased, by counsel, and, pursuant to the Court’s Trial Order (ECF No. 170) states her objections to Defendants’ Designated Trial Exhibits.

| Exhibit | Description | Basis for Objection |
|----------------|--|---|
| 2. ZZ. | Givens’s Medical Record from July 29, 2009 | Irrelevant and Prejudicial. The record is from 13 years prior to the Feb. 2022. |
| 9 | Lee Circuit Court Online Sentencing | Irrelevant and Prejudicial. <i>See</i> argument below. |
| 10 | Lee Circuit Sentencing Order | Irrelevant and Prejudicial. <i>See</i> argument below. |
| 11 | Hobbs Letter to Court | Irrelevant and Prejudicial. <i>See</i> argument below. |

The Plaintiff anticipates tersely mentioning the circumstances that caused Mr. Givens to be committed to prison, however, there is no need, and it would be highly prejudicial if the Defendants were permitted to go into any detail concerning the circumstances.

Federal Rule of Evidence 401 provides that evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of

consequence in determining the action.” Fed. R. Evid. 401. Plaintiff is willing to stipulate that Mr. Givens had two criminal convictions that landed him in the care of the Virginia Department of Corrections. The jury will know this either way because Mr. Givens died inside the confines of the Marion Correctional Treatment Center in Marion, Virginia. However, the specifics of Mr. Givens’ conduct and the circumstances leading to his being charged and convicted of crimes have no bearing on the current lawsuit before this Court.

Even if relevant, some evidence will still not be admissible “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. Assuming, *arguendo*, that the specifics of Mr. Givens’ crimes bear some relevance to this case, the minimal probative value gained from the introduction of the facts surrounding his crimes would be substantially outweighed by the unfair prejudice to Plaintiff. The Fourth Circuit has held that the possible prejudicial effect of evidence can require its exclusion when “the trial judge believes there is a genuine risk that the emotions of the jury will be excited to irrational behavior, and that this risk is disproportionate to the probative value of the offered evidence.” *Westfield Ins. Co. v. Harris*, 134 F.3d 608, 614 (4th Cir. 1998) (citing *Morgan v. Foretich*, 846 F.2d 941, 945 (4th Cir. 1988) (internal quotation marks and citations omitted)). The facts surrounding Mr. Givens’ crimes of first-degree murder and the use of a firearm in the commission of a felony are highly inflammatory and likely to lead the jury to improperly punish the Plaintiff for his commission of such. The risk of the jury being “excited to irrational behavior” outweighs any minimal probative value gained from introducing the facts surrounding the crimes that formed the basis for Mr. Givens’ convictions and incarceration.

Respectfully submitted,

KYMBERLY HOBBS, ADMINISTRATOR
OF THE ESTATE OF CHARLES JAMES
GIVENS,
DECEASED

By: /s/ Mark J. Krudys
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*Counsel for Plaintiff Kymberly Hobbs, Administrator of the Estate of Charles James Givens,
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March 2025, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing all counsel of record.

/s/ Mark J. Krudys

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